

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FIVE STAR BANK,
Plaintiff,
-vs-

KATHERINE MOTT-FORMICOLA,
ROBERT HARRIS, KRM EVENTS LLC,
KATHERINE'S ON MONROE LLC, THE
DIVINITY ESTATE AND CHAPEL LLC,
KNC ELEGANCE LLC d/b/a THE
WINTERGARDEN BY MONROES,
11 WEXFORD GLEN LLC, RCC MONROES
LLC, NAF REMODELING, LLC, MONROES
AT RIDGEMONT LLC, CRESCENT BEACH
AT THE LAKE LLC, MOTT MANAGEMENT
LLC, KRISTINA BOURNE, TAYLOR
PAGANO, TIMOTHY LAROCCA,

No. 24-cv-6153-FPG

Defendants.

DECLARATION

DAVID ROTHENBERG, hereby declares under penalty of perjury that the following is true and correct:

1. I am an attorney admitted to practice before the United States District Court for the Western District of New York.
2. I am a principal in the firm of Rothenberg Law, attorneys for defendant Katherine Mott-Formicola (“Mott”) and all Entity Defendants, in this action.
3. I submit this declaration in support of a motion to dismiss plaintiff’s amended complaint as against defendant Mott and all Entity Defendants.

4. Defendant Mott and all Entity Defendants move to dismiss plaintiff's second and eighth claims—the only two claims in plaintiff's amended complaint for which federal jurisdiction purportedly exists—for failure to state a claim.

5. Defendant Mott and all Entity Defendants move to dismiss plaintiff's first, third, fourth, fifth, sixth, and seventh claims for lack of subject matter jurisdiction, because these six claims are all based on state common law theories for which no independent basis exists for exercising federal jurisdiction.

6. Furthermore, upon dismissal of plaintiff's second and eighth claims, this Court should decline to exercise supplemental jurisdiction over plaintiff's remaining state law claims.

7. The grounds in support of defendants' motion are set forth in defendant's memorandum of law filed herewith.

WHEREFORE, defendant Katherine Mott-Formicola and the Entity Defendants hereby request the entry of an order as follows:

- A) Dismissing plaintiff's second and eighth claims pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for failure to state a claim;
- B) Dismissing plaintiff's first, third, fourth, fifth, sixth, and seventh causes of action, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction; and
- C) Granting defendants such other and further relief as to the Court seems just, proper, and equitable.

Executed on: June 14, 2024
Rochester, NY

s/ David Rothenberg
David Rothenberg, Esq.